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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re Marriage of MARCY and IZAK  
ZIRK ENGELBRECHT.

B209438

(Los Angeles County  
Super. Ct. No. BD441793)

MARCY MILLER,

Respondent,

v.

IZAK ZIRK ENGELBRECHT,

Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

Michael P. Linfield, Judge. Affirmed.

Law Offices of Alexander Lebecki and Alexander Lebecki for Appellant.

Center for Enforcement of Family Support and Raymond R. Goldstein for  
Respondent.

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Following a hearing on her motion to determine arrearages under the judgment dissolving her marriage to appellant Izak Zirk Engelbrecht, respondent Marcy Miller was awarded the sum of \$481,088. Mr. Engelbrecht appeals that order, contending that the trial court abused its discretion in two ways: by failing to consider his request for affirmative relief and/or offsets, and by failing to defer consideration of Ms. Miller's motion regarding arrearages until after the hearing on his motion to set aside the judgment. Finding no error, we affirm.

### FACTUAL AND PROCEDURAL SUMMARY

Pursuant to written stipulation of the parties, a judgment dissolving this marriage was entered on August 15, 2006. The stipulation and judgment provided that Mr. Engelbrecht would pay temporary spousal support of \$22,500 per month through December 2006. Mr. Engelbrecht was also responsible for the lease payments and insurance premiums on two automobiles, health and life insurance premiums, and pet care expenses. In January 2007, Mr. Engelbrecht failed to make certain of these support payments; in early May 2007, he notified Ms. Miller that he would no longer make any payments under the judgment.

In addition, in lieu of permanent spousal support, the stipulation and judgment provided that Mr. Engelbrecht would pay to Ms. Miller, on or before December 31, 2008, an "Equalizing Payment" of \$2,350,000. Commencing on January 1, 2007, Mr. Engelbrecht was required to pay Ms. Miller monthly interest on the unpaid Equalizing Payment at the rate of 10 percent per annum until it was paid in full. Thus, Mr. Engelbrecht was obliged to pay Ms. Miller \$19,533.33 each month from January 1, 2007 until December 31, 2008, at which time the \$2,350,000 Equalizing Payment would become due and payable. Mr. Engelbrecht paid the interest due on the Equalizing Payment through March 2007, but made no subsequent interest payments.

On August 3, 2007, Mr. Engelbrecht filed a motion to set aside the marital settlement agreement and stipulated judgment, alleging that he "made a mistake" and that the stipulated property division was inequitable. The hearing on that motion was deferred

until the conclusion of discovery, which was being conducted under the supervision of a discovery referee, Isabel Cohen, a retired judge of the Los Angeles Superior Court.

On January 10, 2008, Mr. Engelbrecht filed a motion to stay enforcement of the judgment. That motion was heard and denied on February 11, 2008.

On May 2, 2008, Ms. Miller filed a motion to determine arrearages, which was set for hearing on June 16, 2008. Accompanying her motion were extensive exhibits in support of the requested relief. Mr. Engelbrecht opposed the motion, principally by way of a collateral attack on the judgment.<sup>1</sup>

At the hearing on the motion, the court remarked that in Mr. Engelbrecht's responsive pleading, he was "basically arguing that this court erred in its previous orders of February 11th, that I should have stayed the enforcement of the judgment, and you're rearguing that. At the same time, there's no motion for reconsideration. As far as this court is aware, there's no appeal pending. So the judgment is in effect . . . and I don't see that there's any excuse for his not complying with the judgment." After hearing counsel's argument, the court reiterated "You're attacking the judgment." The court further noted that Mr. Engelbrecht presented no evidence to contradict Ms. Miller's claims. Consequently, the court accepted Ms. Miller's figure of \$481,088, and awarded that sum to her. In its order filed on July 3, 2008, the court explained that this figure was comprised of the following: \$266,227.23 in interest on the Equalizing Payment; \$210,623 in spousal support; and \$4,237.77 in interest on the spousal support.

Mr. Engelbrecht appeals the order, contending that it was an abuse of discretion for the trial court "not to consider [his] request for affirmative relief and/or offsets in ruling on [the] motion to determine arrearages" and "not to defer consideration of [the]

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<sup>1</sup> For instance, in his opposition to the motion, Mr. Engelbrecht argued that he signed the stipulated settlement under duress; that Ms. Miller misrepresented the value of the couple's residence; and that Ms. Miller threatened to have Mr. Engelbrecht deported. He also contended that "there was a mistake made in the Judgment" in that the stated amount of the Equalizing Payment – \$2,350,000 – was overstated by \$350,000.

motion to determine arrearages until the hearing on [the] motion to set aside the judgment."

Mr. Engelbrecht states that "[i]n his Response to Respondent's Motion to Determine Arrearages, Appellant raised numerous specific items as offsets for which he specifically asked the court to grant him affirmative relief in assessing Respondent's claimed arrearages." From the fact that the trial court did not reduce the award to Ms. Miller by the amount of these claimed offsets, Mr. Engelbrecht concludes that the trial court did not consider his request.

The court stated on the record at the hearing on the motion, "Counsel, the court has read all three briefs including the one that you believe that the court shouldn't have read, the reply declaration. I've read the attached exhibits. And the court has determined the amount of \$481,088." The court heard arguments of counsel. The court excluded no evidence proffered by either party. Thus, the argument that the court failed to consider Mr. Engelbrecht's claimed offsets is simply not supported by the record. To the contrary, the record establishes that the court considered and rejected the claimed offsets. Moreover, the court's order is supported by substantial evidence, to wit: Ms. Miller's ten page declaration detailing the temporary support obligations which Mr. Engelbrecht was required to meet under the August 15, 2006 judgment, and setting forth the sums which he had failed to pay to date. Accordingly, this claim of error must fail.

Mr. Engelbrecht also cites as an abuse of discretion the trial court's failure to defer consideration of the arrearage determination until his motion to set aside the judgment was heard. Although he cites a case, *Milstein v. Superior Court* (1945) 72 Cal.App.2d 123, for the proposition that a "trial court ha[s] the ability to stay the enforcement of a judgment in the interests of justice," Mr. Engelbrecht cites no authority to support his contention that a court abuses its discretion by ruling on a motion to determine arrearages following the entry of a stipulated judgment of dissolution and the denial of a motion to stay enforcement of that judgment. We therefore deem the issue waived. (*People v. Stanley* (1995) 10 Cal.4th 764, 793 ["[E]very brief should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the

court may treat it as waived, and pass it without consideration"]; *Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6 [scope of appeal is limited to those issues adequately raised and supported in opening brief even where review is de novo].) We note, however, that the point is not well-taken. Mr. Engelbrecht's attempts to thwart Ms. Miller's receipt of the sums he agreed to pay is nothing short of an attempt to nullify the stipulated judgment of dissolution entered on August 15, 2006. "No appeal having been taken therefrom and no stay bond having been filed, the court was powerless to stay the enforcement of the execution" (*Milstein v. Superior Court, supra*, 72 Cal.App.2d at p. 125) except as provided in Code of Civil Procedure section 918.

#### DISPOSITION

The order is affirmed. Ms. Miller is to recover her costs on appeal.

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ARMSTRONG, J.

We concur:

TURNER, P. J.

MOSK, J.